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Counsel for Calpine Corporation, et al.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E Corporation, Pacific Gas & Electric Company,

Debtors.

- Affects PG&E Corporation
 - Affects Pacific Gas and Electric Company
 - Affects both Debtors

* All papers shall be filed in the Lead Case,
No. 19-30088 (DM)

Chapter 11

Case No. 19-30088 (DM)

(Lead Case)
(Jointly Administered)

CALPINE AND ITS SUBSIDIARIES PROPOSED MODIFICATIONS TO PLAN / CONFIRMATION ORDER

1 Calpine Corporation, on behalf of itself and its subsidiaries, including without limitation, Russell
2 City Energy Company, LLC, Los Esteros Critical Energy Facility, LLC, Geysers Power Company, LLC,
3 Gilroy Energy Center, LLC, Creed Energy Center, LLC, and Goose Haven Energy Center, LLC
4 (collectively, “Calpine”), by and through counsel, hereby files this statement with regard to the *Debtors’*
5 and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization Dated March 16, 2020
6 (the “Plan”) and related proposed order confirming the Plan (the “Confirmation Order”).¹

7 1. In accordance with the Court’s direction at the Confirmation Hearing held on June 8, 2020,
8 Calpine suggests the following changes to the Plan and Confirmation Order:²

9 2. **Delete section 8.2(e) of the Plan and paragraph 34(d) of the Confirmation Order.** The
10 parties’ rights are preserved by the Bankruptcy Code, which provides that assumption cannot occur until
11 a default has been cured or adequate assurance of a timely cure has been given, and paragraph 33 of the
12 Confirmation Order, which provides that: “Any counterparty to an executory contract or unexpired lease
13 that failed to object timely to the proposed assumption, assumption and assignment, or Cure Amount, is
14 hereby deemed to have assented to such assumption, assumption and assignment, or Cure Amount.” The
15 Debtors’ language overreaches the protections afforded by the Bankruptcy Code, and is inconsistent with
16 their represented resolution that: “A determination as to how the issues apply to a particular dispute should
17 be deferred for when, if ever, a dispute might arise. . . . Deferring determination in favor of such context
18 is better than issuing a blanket ruling in a vacuum on the impact of 502(e) or other matters affecting
19 potential claims that exist now only in the abstract.” (See Docket No. 7831-1, Debtors’ Demonstrative).

20 3. **Delete paragraph 37 of the Confirmation Order.** This provision is also inconsistent
21 with the Debtors’ proposed resolution: “We will delete from the Plan Supplement the language that these
22 contractual indemnity rights are discharged on assumption.” (See *id.*).

23 4. **Add to the Confirmation Order:** “Notwithstanding anything to the contrary in the Plan,
24 Plan Supplement, or Confirmation Order, entry of this Order shall not operate to Allow or Disallow any

25
26 ¹ Calpine filed a limited objection at Docket No. 7214 to the Debtors’ Plan with respect to the Plan’s treatment of
executory contracts.
27
28 ² Calpine notes the statement of the Official Committee of Unsecured Creditors filed at Docket No. 7814. Calpine agrees
with those changes.

1 filed proofs of Claim and instead all such proofs of Claim shall be adjudicated pursuant to the claims
2 resolution process set forth in the Plan.”³

3 DATED: June 8, 2020

KIRKLAND & ELLIS LLP

5 By: /s/ Michael P. Esser

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17 *Counsel for Calpine Corporation, et al.*

28 ³ This language is as proposed by the OCC in their statement.